



EMAIL: AROD@ARODPOLICIES.ORG

WWW.ARODPOLICIES.ORG

Dunja Mijatović
Commissioner of Human Rights
Council of Europe

March 15, 2019

Submission of report demonstrating Largescale Violations of ICCPR/ECHR and a Call to Action.

Dear Madam.

We are an organization dedicated to the rule of law who work to ensure that grave human rights concerns in the area of drug policy are addressed. We would like to bring to your attention an issue of utmost urgency, one that directly concerns the rights of more than 40 million European drug law violators, and indirectly some 300 million around the world.

To begin with, there is more than enough evidence that the current drug policy paradigm is incompatible with basic human rights principles. Because principles of autonomy, equality, proportionality, dignity, and the liberty presumption—principles at the very heart of our constitutional heritage—clearly invalidate the prohibition regime, this is a problem that must be addressed if the authority of the state is to remain on solid ground, and our organization has prepared a report that is designed to help reform activists, bureaucrats, and government officials address the problem.

This report is called *Human Rising: The Prohibitionist Psychosis and its Constitutional Implications* (2018). Arguing from First principles, it documents how drug prohibition has informed Western society over the course of generations. As is shown, drug policy is a political, not an evidence-based construct, and it only persists because of moral panic. Indeed, when all is said and done, unconsciousness and power politics have been the prime shapers of drug policy, and this volume has been delivered to individual countries in the run up to CND's 62nd High-Level Session. (At this session, which is happening as we speak, it will also be delivered to top-officials and reform-minded individuals.) Already, several countries have greeted it



favorably, while at the level of the COE, this report has been delivered to the Pompidou Group and the Private Office of the Secretary General.

The COE, in this regard, finds itself in a somewhat difficult position. At the one hand, we have the Pompidou Group, which rapidly and increasingly are putting human rights concerns first, trying to implement policies that respect the rights of drug users. The rights of producers, distributors, etc., have effectively been ignored, but Denis Huber, the Executive Secretary of the Pompidou Group, has thanked us for addressing broader concerns and asked the Presidency to inform member states about the positions articulated by AROD. International organizations are looking forward to see what comes out of this communication, but it is already clear that First principles, after being overlooked to this day, is about to make their presence and implications known to those who deal with drug policy.

On the other hand, we have the Private Office of the Secretary General, which is trying to resolve an increasingly obvious conflict between the COE's human rights obligations and a decision made by the European Court of Human Rights in 2012. At this time, a case (no. 67078/10) was prepared where the applicant held that first principles invalidated the prohibition regime, and an earlier version of the report you now receive was brought forward as documentation. In a single-judge decision, however, the Court excused itself with its own incompetence, thus leaving more than 40 million European drug law violators without an effective remedy. Hundreds of letters were sent to the COE, asking the president of the Court and the Secretary General to intervene and to ensure that European drug law violators got a fair trial, but to no avail; these officials washed their hands of the Court's decision and it would go many more years before it would come back to haunt them. Today, however, as more and more constitutional courts are doing the job that the European Court failed to do,¹ this decision to deny drug users access to an independent, impartial, and competent tribunal, has become a problem for those who put human rights concerns before political expediency, and the Office of the Secretary General is currently reviewing the matter.

It will be interesting to see whether these officials act on their human rights obligations. If they do, the drug law faces principled scrutiny, one that will provide the solution to many problems affecting law and order, but we believe that the time has come for the Commissioner of Human Rights to get involved.

From the documentation received, you will find that not only the European Court but several western states, until today, have denied drug users their right to an effective remedy. This has been part of a wider pattern of oppression, for drug prohibition is historically similar to other

¹ Last year, with respect to the use of cannabis, constitutional courts in Mexico, South Africa, and Georgia invalidated drug laws, holding the state accountable for human rights violations.



mass-movements gone wrong in that it is the result of scapegoating, humanity's unfortunate tendency to blame politically weak groups for problems that are a collective responsibility. As humanity matures, we must do away with this great force of injustice, and we now ask the Commissioner to honour her human rights pledge by ensuring the COE's unwavering commitment to First principles.

After all, without a firm basis in First principles, "human rights" means nothing. It will be another expression of arbitrary law, a catch-all phrase which includes whatever activity is endorsed by authority, and the people deserve better. On behalf of 40 million European drug law violators, therefore, we ask that you make a concerted effort to ensure that these principles—the very basis of Western Civilization and constitutional order—are applied to drug policy. As an NGO dedicated to the rule of law, we will assist in any way we can,² and we look forward to hearing from the Commissioner on this most important/urgent matter.

Yours sincerely,

A handwritten signature in black ink that reads 'Roar Mikalsen'. The signature is fluid and cursive, with the first name 'Roar' and last name 'Mikalsen' clearly legible.

Roar Mikalsen
President of AROD
The Alliance for Rights-Oriented Drug Policies

Appendices:

- (1) Human Rising: The Prohibitionist Psychosis and its Constitutional Implications (2019 edition)
- (2) Letter to the Pompidou Group, November 27, 2018
- (3) Response from Denis Huber, Executive Secretary, December 14, 2018
- (4) Letter to COE Secretary General, December 21, 2018
- (5) Letter to Secretary General, June 4, 2012
- (6) Letter to Secretary General, February 22, 2013
- (7) Follow-up letter to the Private Office of the Secretary General, March 15, 2019

² The appendices will go a long way in explaining the situation. For a more thorough review, our website www.rodopolicies.org will provide full disclosure of the premises and implications of the rights-oriented debate, as well as correspondence with authorities.